



Signed and Filed: October 16, 2020

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case  
BENJA INCORPORATED, ) No. 20-30819-DM  
Debtor. ) Chapter 11  
)  
)  
)

**ORDER ESTABLISHING PROCEDURES FOR DISCLOSURE  
STATEMENT HEARING AND CONFIRMATION HEARING**

Unless otherwise ordered, the plan proponent shall comply with the following procedures. Section A governs all disclosure statements, regardless of form. For most cases involving individuals or small businesses (as defined in 11 U.S.C. § 101(51C) and (51D)) ("Small Business"), Section B of this order provides abbreviated procedures for hearings in which the plan proponent seeks tentative approval of a disclosure statement and has utilized either the court's Standard-Form Combined Plan and Disclosure Statement (in individual and certain business cases) (the "NDBC Plan/DS") or the national form of a small business plan and disclosure statement (Official Form Nos. 25A and 25B)(in either case, the "Form DS/Plan"). The NDBC Plan/DS and

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1 its Instructions, as well as the national forms, are available  
2 on the court's website (www.canb.uscourts.gov).

3 Section C sets forth procedures for hearings in more  
4 complex chapter 11 cases in which the plan proponent is seeking  
5 final approval of a separate disclosure statement in accordance  
6 with Fed. R. Bankr. P. 3017. (Such plans and disclosure  
7 statements are referred to as a "Traditional DS" or a  
8 "Traditional Plan.")

9 **I. DISCLOSURE STATEMENT**

10 **A. GENERAL PROCEDURES FOR ALL DISCLOSURE STATEMENT HEARINGS**

11 1. Upon filing a Traditional DS and a Traditional Plan or  
12 a Form DS/Plan, the filer must forward to the court at the same  
13 time a hard-copy version marked "Judge's Copy." The face of the  
14 document should reflect the date and time of any scheduled  
15 hearing for approval of the Traditional DS or for tentative  
16 approval of the Form DS/Plan.

17 2. Disclosure statement hearings should not be scheduled  
18 on the court's regular law and motion calendar. To schedule a  
19 hearing for approval of a Traditional DS, or for tentative  
20 approval of a Form DS, the proponent should contact Ms. Lorena  
21 Parada at 415-268-2323 or Lorena\_Parada@canb.uscourts.gov. A  
22 court order is not necessary for scheduling a disclosure  
23 statement hearing, notwithstanding Official Form No. 12.

24 3. **Three (3) business days prior to the hearing (and any**  
25 **continued hearing), the plan proponent shall advise the law**  
26 **clerk by e-mail (Peggy\_Brister@canb.uscourts.gov) whether the**  
27 **proponent intends to go forward with the hearing. Failure to**  
28

1 make this 3-day notification may result in a continuance of the  
2 hearing, or a delay in obtaining court review and approval.

3 B. PROCEDURES FOR HEARINGS ON FOR TENTATIVE APPROVAL OF  
4 DISCLOSURE STATEMENT

5 1. Unless otherwise ordered by the court: (a) individual  
6 debtors seeking tentative approval of a disclosure statement  
7 must utilize the NDBC Plan/DS and follow the Instructions posted  
8 on the court's website; and (b) Small Business debtors seeking  
9 tentative approval of a disclosure statement under Fed. R.  
10 Bankr. P. 3017.1 must use the Official Form 25A, revised  
11 December 2011 and Official Form 25B, revised December 2008. The  
12 court may permit some businesses to utilize the NDBC Plan/DS  
13 (with modifications).

14 2. The plan proponent may set a hearing for tentative  
15 approval of the Form DS/Plan on at least 14 days' notice (filed  
16 electronically) and mailed to all non-ECF parties who have  
17 appeared in the case and who have requested special notice.  
18 Notice need not be served on all creditors. The Form DS/Plan  
19 should be filed before or at the same time the notice of hearing  
20 is filed.

21 3. After a hearing at which the court tentatively approves  
22 the Form Plan/DS, the plan proponent should upload a form of  
23 order that is consistent with the Order Tentatively Approving  
24 Disclosures in Combined Plan and Disclosure Statement, Fixing  
25 Time for Submitting Ballots and Filing Objections to  
26 Confirmation of Plan and/or to Final Approval of Disclosure  
27 Statement and Setting Hearing (available in Judge Montali's  
28 forms on the court's website).

1 C. PROCEDURES FOR TRADITIONAL DS HEARINGS

2 1. In cases where a proponent is seeking a final approval  
3 of a Traditional DS as adequate under 11 U.S.C. § 1125, the  
4 proponent shall provide notice of the hearing to the debtor,  
5 creditors, equity security holders, United States Trustee,  
6 Securities and Exchange Commission and other parties in interest  
7 as provided in Fed. R. Bankr. P. 3017(a) and B.L.R. 3017-1. The  
8 notice shall contain the information required by Official Form  
9 No. 12 and shall state that the deadline for the filing of  
10 objections is seven days prior to the hearing. The Traditional  
11 Plan and the Traditional DS shall be served, with the notice,  
12 only on the United States Trustee and the persons mentioned in  
13 the second sentence of Fed. R. Bankr. P. 3017(a). Proof of  
14 service of the foregoing documents must be filed at least three  
15 (3) business days prior to the hearing.

16 2. The plan proponent may establish that the disclosure  
17 statement meets the applicable requirements of 11 U.S.C.  
18 §§ 1125(a) and (b) by offer of proof, declaration or, if the  
19 court so permits or requires, live testimony. **In all cases, the**  
20 **debtor and a competent witness must be present.** Briefs are not  
21 required.

22 3. At the conclusion of the disclosure statement hearing,  
23 counsel for the plan proponent shall be prepared to advise the  
24 court of the amount of court time the confirmation hearing will  
25 require. If a contested confirmation hearing is anticipated,  
26 the court will set an evidentiary hearing and will establish  
27 procedures for the filing of briefs, exchange and marking of  
28 exhibits, disclosure of witnesses and discovery.

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1           4.    A proponent seeking a continuance of a disclosure  
2 statement hearing should appear at the scheduled hearing to make  
3 that request, as the hearing will have been noticed out to all  
4 creditors. For that reason, the court will not grant advance  
5 telephonic requests for continuances. Nonetheless, if a  
6 proponent does not anticipate seeking court approval of the  
7 disclosure statement at the hearing, the proponent should notify  
8 the court as soon as possible.

9           5.    The court will not approve a disclosure statement for  
10 a plan which, on its face, does not conform to the requirements  
11 of the Bankruptcy Code. Accordingly, counsel for the plan  
12 proponent who attends the hearing must be familiar with the  
13 disclosure statement, the plan, the debtor and chapter 11 of the  
14 Bankruptcy Code. In particular, plans should not classify  
15 expenses of administration (11 U.S.C. § 503(b)) or unsecured  
16 priority tax claims (11 U.S.C. § 507(a)(8)) as those claims are  
17 to remain unclassified and are to be treated under 11 U.S.C. §  
18 1129(a)(9)(A) and (C). Further, real property tax claims should  
19 normally be classified as senior secured claims. Disclosure  
20 statements should contain correct statements of the voting  
21 requirements of 11 U.S.C. § 1126(c) with respect to impaired  
22 classes of claims and interests.

23           6.    Upon approval of the Traditional DS, the plan  
24 proponent shall submit to the court a proposed Order Approving  
25 Disclosure Statement and Fixing Time conforming to Official Form  
26 No. 13, with any modifications required by the court.

1                                    **II.    CONFIRMATION HEARING\***

2            1.    The plan proponent should comply with B.L.R. 3020-1.

3            2.    All ballots must be filed at least three (3) business  
4 days prior to the confirmation hearing.

5            3.    A ballot tabulation showing the percentages of  
6 acceptances and rejections for each impaired class, in number  
7 and dollar amount, must be filed at least three (3) business  
8 days prior to the confirmation hearing. The tabulation should  
9 demonstrate, by number of ballots submitted and by amounts of  
10 claims represented, how the requisite majorities (see 11 U.S.C.  
11 § 1126(c)) have been calculated, and should also identify any  
12 unimpaired classes and state the reason that each such class is  
13 unimpaired under 11 U.S.C. § 1124. A copy of the ballot  
14 tabulation should be served on the United States Trustee,  
15 counsel for the Official Creditors' Committee, or if no such  
16 committee has been appointed, the creditors included on the list  
17 filed pursuant to Fed. R. Bankr. P. 1007(b), and any parties  
18 objecting to confirmation.

19           4.    Proof of service of the Traditional Plan and  
20 Traditional DS, or the Form Plan/DS, official ballot, and Order  
21 Approving or Tentatively Approving Disclosure Statement must be  
22 filed at least three (3) business days prior to the confirmation  
23 hearing.

24           5.    **Three (3) business days prior to the hearing (and any**  
25 **continued hearing), the plan proponent shall advise the law**  
26

27           \_\_\_\_\_  
28           \* The hearing will also be for final approval of the Form  
DS/Plan when the court has previously tentatively approved it.

1 clerk by e-mail (Peggy\_Brister@canb.uscourts.gov) whether the  
2 proponent intends to go forward with the hearing.

3 6. Uncontested Hearings. If the plan has been accepted  
4 by the requisite majorities and no objections to confirmation  
5 have been filed, the plan proponent may establish that the plan  
6 meets the applicable requirements of chapter 11 by offer of  
7 proof, declaration or, if the court so permits or requires, live  
8 testimony. **In all cases, a competent witness must be present.**  
9 Unless covered by the proponent's presentation and confirmation  
10 brief, the proponent can expect the court to inquire, inter  
11 alia, as to the ability of the plan proponent to meet any  
12 Effective Date funding requirements, the status of any unpaid  
13 trade debt, taxes or other obligations which arose after the  
14 filing of the petition (see 11 U.S.C. § 1129(a)(9)(A)), the  
15 continued accuracy of any projections or liquidation analyses  
16 previously included in the disclosure statement, and how those  
17 factors bear upon the feasibility of the plan under 11 U.S.C.  
18 § 1129(a)(11) and the chapter 7 equivalency requirements of 11  
19 U.S.C. § 1129(a)(7). Confirmation briefs are not required, but  
20 may be filed at least three (3) days before the hearing (with  
21 copies served on the United States Trustee, counsel for the  
22 Official Creditors' Committee, or if no such committee has been  
23 appointed, the creditors included on the list filed pursuant to  
24 Fed. R. Bankr. P. 1007(b), and any parties objecting to  
25 confirmation, with a hard-copy version marked "Judge's Copy"  
26 submitted to chambers.)

27 7. Contested Hearings. In the event the plan proponent  
28 receives an unanticipated objection to confirmation or an  
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1 unanticipated plan rejection by a class of impaired claimants,  
2 and the proponent nevertheless intends to request confirmation,  
3 the proponent must make a good faith effort to meet and confer  
4 with the objecting claimant (or the claimant's counsel, if  
5 represented) prior to the confirmation hearing to identify all  
6 disputed legal and factual issues and to discuss the conduct of  
7 the confirmation hearing. The plan proponent should advise the  
8 court concerning the existence of unresolved disputes when  
9 notifying the court in accordance with paragraph C(5). Unless  
10 scheduling procedures were previously established at the  
11 disclosure statement hearing, the court will determine at the  
12 confirmation hearing whether the hearing should proceed with  
13 respect to the disputed matters, the undisputed matters, neither  
14 or both. If necessary, the court will establish appropriate  
15 scheduling procedures.

16       8. **Continuances.** A proponent seeking a continuance of a  
17 confirmation hearing should appear at the scheduled hearing to  
18 make that request, as the hearing will have been noticed out to  
19 all creditors. For that reason, the court will not grant  
20 advance telephonic requests for continuances. Nonetheless, if a  
21 proponent does not anticipate seeking confirmation at the  
22 hearing, it should notify the court as soon as possible.

23       9. **Final Decree.** The plan proponent should comply with  
24 B.L.R. 3022-1. At the confirmation hearing, the proponent of  
25 the plan shall advise the court when the proponent anticipates  
26 that the plan will be substantially consummated and all post-  
27 confirmation activity completed. The court may set deadlines  
28 for filing reports pursuant to Fed. R. Bankr. P. 3022, filing an  
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1 application for a final decree pursuant to Fed. R. Bankr. P.  
2 3022 and B.L.R. 3022-1, and closing the case.

3 The court may schedule a post-confirmation status  
4 conference at the confirmation hearing. That conference will  
5 normally be set approximately six (6) months after confirmation.  
6 Counsel should be prepared to include any such deadlines in the  
7 Order Confirming the Plan. The debtor and counsel are reminded  
8 that United States Trustee fees established in 28 U.S.C. § 1930  
9 will be payable after confirmation, until entry of a final  
10 decree. After the case has been closed, a party seeking relief  
11 must move to have the case reopened before or concurrent with  
12 filing its application for relief.

13 **\*\*END OF ORDER\*\***

COURT SERVICE LIST

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San Francisco, CA 94116

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